

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	CASE NO. CR19-200-RSM
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING MOTION TO
	)	REOPEN DETENTION ORDER
THOMAS DAY,	)	
	)	
Defendant.	)	
_____	)	

Defendant is charged by Indictment with one count of Sexual Abuse of a Minor, alleged to have occurred on the Swinomish Indian Reservation (Dkt.12.)

Defendant made his initial appearance on this charge on October 19, 2019. (Dkt. 4.) Counsel was appointed, and defendant was advised of the charges and possible penalties. The government moved to detain defendant, and a detention hearing was conducted, following which defendant was ordered detained pending trial. (Dkt. 9, 10.) The Court concluded that defendant posed a risk of nonappearance and a risk of danger, and that there did not appear to be any conditions of release that could reasonably address those risks.

Defendant bases his request to reopen the hearing on 18 U.S.C. §3142(f)(2) and

01 3142(i). Section 3142(f)(2) provides that a detention hearing may be reopened “if the judicial  
02 officer finds that information exists that was not known to the movant at the time of the hearing  
03 and that has a material bearing on the issue whether there are conditions of release that will  
04 reasonably assure the appearance of such person as required and the safety of any other person  
05 and the community.” *Id.* Section 3142 “allows for temporary release of a person in custody  
06 “if the judicial officer determines such release to be necessary for preparation of the person’s  
07 defense or for another compelling reason.” The motion has been referred to the undersigned by  
08 Chief Judge Martinez for decision. The Court finds this motion appropriate for resolution  
09 without oral argument or an evidentiary hearing.

10 The Court finds that the proffered reasons for reopening the detention order do not  
11 satisfy the requirements of 18 U.S. C. § 3142(f)(2)(B), and do not weigh materially in favor of  
12 release. Nor has defendant established the necessity of temporary release for preparation of his  
13 defense or for any other compelling reason. Defendant points to the health issues caused by  
14 the COVID-19 virus and further argues the related lockdown at the Federal Detention Center  
15 prevents him from meeting with an expert for a six-hour expert evaluation and assessment  
16 related to the presentation of his case. The government, however, proffers a statement from a  
17 supervisory attorney for the FDC that the request for the in-person evaluation has been  
18 tentatively approved, subject to receipt and review of a written request from defense counsel  
19 and health screening of the expert. The government described in detail the preventative  
20 measures taken at the FDC to limit exposure to the virus and to protect the health of inmates,  
21 staff, and the public, including screening of all persons entering the facility, quarantine  
22 measures, and minimization of in-person contact. (Dkt. 25.) Defendant does not establish that

01 he presents any special risk factors in connection with the virus, nor does he show that release  
02 to the community at large would be a safer alternative.

03 Furthermore, the release conditions proposed by defendant do not reasonably address  
04 the risk of nonappearance and risk of danger previously found by the Court. Defendant has a  
05 history of disregarding tribal protection orders, allegedly continuing to maintain a sexual  
06 relationship with the minor victim, including alleged activity at the residence to which he now  
07 seeks release. With the state-wide restrictions imposed by the COVID-19 pandemic,  
08 community supervision is particularly reliant on a defendant's willingness to abide by  
09 conditions of release. Defendant has not shown that he can be relied on to abide by those  
10 conditions.

11 For the reasons stated, defendant's motion to reopen the detention hearing is DENIED.

12 DATED this 12th day of June, 2020.

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15 Mary Alice Theiler  
16 United States Magistrate Judge  
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